



Terms/Water Roles and Responsibilities/Statutes

Terms and Definitions

1. Management

- The activity of planning, developing, data collection, distribution, and use of water resources under defined water polices and regulations.
- This is not a specific process but refers to all activity surrounding the issuance, decree and use of water rights including administration, distribution, and enforcement.

2. Administration

- The maintenance and update of water right records.
- The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records (1972 Montana Constitution, Article IX, Section 3)

2. Final Decree

- A decree issued by the Montana Water Court, following the resolution of all objections and issue remarks, establishing the validity of all pre-July 1, 1973 existing water rights (85-2-234).

3. Regulation

- Distribution and enforcement

4. Distribution

- The day-to-day decisions regarding water delivery
 - i. For purposes of this discussion, the distribution of water by commissioners appointed by the District Court (sometimes referred to as an Enforcement Action).
 - ii. In the absence of a water commissioner, distribution of water on a source is dependent on water users who can make call if they are not receiving their water when it is available in priority.
- A redbook is a listing by priority date of all water rights on a source, or a reach of a source, being controlled by an appointed Water Commissioner. The redbook lists points of diversion and flow rates to allow the commissioner to distribute water in priority and shut down delivery to water rights out of priority.

5. Enforcement

- Is an action in response to a violation of the Montana Water Use Act (85-2-114) (e.g., diverting water without a permit, noncompliance with water right, or wasting water).

Reference: [Water Distribution Guide](#)

Water Roles and Responsibilities:

	DNRC	Water Court	District Court	Supreme Court
Adjudication	<ul style="list-style-type: none"> claims examination issue remarks 	<ul style="list-style-type: none"> oversees proceeding, through final decree 		<ul style="list-style-type: none"> issues rules hears appeals from Water Court
Use permits and Change Authorizations	<ul style="list-style-type: none"> oversees application process, through final order may revoke permits certifies adjudication-related issues 	<ul style="list-style-type: none"> answers certified questions may hear appeal of final order 	<ul style="list-style-type: none"> may hear appeal of final order 	<ul style="list-style-type: none"> hears appeals from Water Court or District Court
Other disputes (Illegal water use, injury to water or ditch rights, distribution controversies among users)	<ul style="list-style-type: none"> may initiate enforcement against illegal water use in District Court supports District Court in distribution proceedings 	<ul style="list-style-type: none"> answers certified questions supports District Court in distribution proceedings 	<ul style="list-style-type: none"> oversees litigation, through final judgment certifies adjudication-related issues appoints water commissioners in distribution proceedings 	<ul style="list-style-type: none"> hears appeals from District Court

Source: Stephen Brown, Michelle Bryan, & Russ McElyea, *Montana Water Law* 16 (2021).

Summary of Statutes Implicated by Issuance of Final Decrees

- General jurisdiction. Jurisdiction to determine existing rights is vested with the Water Court. ([3-7-224\(2\)](#)).
- Amendments and corrections to claims/water rights.
 - Motion to amend statute ([85-2-233\(6\)](#)) is limited to amendments after issuance of a preliminary decree or temporary preliminary decree. The statute does not mention amendments after a final decree.

- The final decree statute allows water judge to correct “clerical mistakes” after issuance of final decree. ([85-2-234\(8\)](#)).
3. Limited reopeners and review of final decrees. ([85-2-237](#)). This statute allows reopeners and review of preliminary and final decrees in these instances:
 - Decrees issued but not noticed throughout the water divisions;
 - Decrees for basins for which claims have been filed under 85-2-221(3); or
 - Decrees for basins that were verified and not examined for which the water court has received a petition and has determined that examination is necessary as provided in 85-2-282 or the water court has issued an order for reexamination on its own initiative.
 - The statute contains additional procedural steps.
 4. Appeal Rights ([85-2-235](#)). Parties authorized to appeal a final decree are specified by statute.
 5. Certificates of water right ([85-2-236](#)). Statute requires the Department to issue certificates of water right after water judge sends a copy of the final decree.
 6. Abandonment. Abandonment proceedings prior to and after a final decree is addressed in several statutes:
 - Abandonment standards ([85-2-404\(1\)](#) and [\(2\)](#)). Subparts (1) (specifying that water rights not used with intention to abandon “immediately expire”) and (2) (creating presumption of abandonment after 10 successive years of nonuse) do not apply to existing rights “until they have been finally determined in accordance with part 2 of this chapter.”
 - Procedure for declaring appropriation rights abandoned ([85-2-405](#)). Requires the Department to “petition the *district court that determined the existing rights* in the source of the appropriation in question” to hearing on abandonment when “the department has reason to believe that an appropriator may have abandoned an appropriation right under 85-2-404.” (Note: no district court has “determined” existing rights within the meaning of the statute; jurisdiction to determine existing rights is vested with the Water Court. ([3-7-224\(2\)](#).)
 - Water Court jurisdiction over abandonment proceedings. ([3-7-501\(4\)](#)). Vests Water Court with jurisdiction over “the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree.”
 7. Effect of final decrees on permitting. ([85-2-313](#)).
 - Statute says permits issued prior to a “final determination of existing water rights” are “provisional and subject to that determination.”
 - Statute creates a process for potential challenges to provisional permits by petition and show cause hearing process by parties seeking to “protect and guarantee existing water rights determined in the final decree.” The statute specifies that “the amount of the appropriation granted in a provisional permit must be reduced, modified, or revoked by the department following a show cause hearing.” The statute is silent as to the forum where the show cause hearing occurs.
 8. Termination or modification of certain basin closures.
 - Upper Missouri basin closure until final decrees issued “for all of the subbasins of the upper Missouri River basin.” ([85-2-343\(1\)](#)).

- “Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4).” ([85-2-344\(5\)](#)).
9. Water distribution controversies ([85-2-406](#)).
- Subpart (2) - Controversies on “a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter” shall be certified to Water Court for “determination of the existing rights that are involved in the controversy.”
 - Subpart (3) – Controversies on “a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court.” Statute specifies circumstances where district court may “alter the existing rights and priorities established in the final decree.”
 - Note: statutes are silent as to jurisdiction over distribution controversies involving federal or tribal water rights. Applicable federal statute is [43 U.S.C. § 666\(a\)](#) (McCarren Amendment sovereign immunity waiver for “administration” of rights determined in a comprehensive adjudication).
10. Statutes governing disputes between owners of water rights co-owned in a ditch company contains differing procedures depending upon whether the waters in the ditch are subject to a final decree. ([Title 85, subpart 4](#)).
11. Note: this summary is limited to Montana statutes and does not include applicable case law or federal statutes, except as noted.